No. 05-

IN THE

# Supreme Court of the United States

BENJAMIN W., and his parent PEGGY W.,

*Petitioner,*

*v.*

KINGSTON CITY SCHOOL DISTRICT,

*Respondent.*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

## PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

Whether the Court of Appeals disregarded the individualized, unique needs of Benjamin W., contrary to 20 U.S.C. § 1400, *et seq.* of the Individuals With Disabilities Education Act (IDEA) in contradiction of this Court's decision in *Board of Education of the Hendrick Hudson Central School District Bd. of Ed., Westchester County v. Rowley*, 458 U.S. 176, 102 S. Ct. 3034 (1982), ("*Rowley*") which decision, if not reversed, will foster ad hoc encroachment upon the fundamental right to an appropriate education, where:

1. The court below erred in holding that unmitigated deference must be paid "to the [school] District" when reviewing decisions regarding the educational needs of disabled children; in granting such unprecedented expansion to the required deference standard, the Court below has tacitly and improperly reduced the requisite standard from a "preponderance of the evidence" to "any evidence".

2. The court below erred in affirming the District Court's decision to apply an expansive view of deference to the second-tier administrative review officer, obviating the Act's requirement for an independent judicial decision of evidence relevant to the questions posed by *Rowley*, an analysis of which, demonstrates that Petitioner's individualized, unique educational needs could not have been met under the School District's unsupported educational plan;

3. The Court of Appeals improperly expanded the deference requirement from that of sound educational policy to virtually any position asserted during administrative proceedings by any school district personnel. This case continues a trend in the Second Circuit to expand deference to areas well beyond that covered by traditional ruling-making, policy and methodology, now deferring all questions of student progress, segregation, educational benefit and least restrictive environment. Deference is now granted without any showing of educational expertise, scientific or peer-reviewed opinions; deference is now granted to school district and even to state officials who lack educational training. Moreover, the Second Circuit's opinion is in increased conflict with other Circuits, highlighting the need for uniformity and interpretive assistance from this Court.

4. The court below erred in not finding that Respondent failed to consider that Ben W., with reading skills at the 4th-5th grade level, could not benefit from placement into 10th grade, regular education, classes even with the use of supplementary aids and services.

## TABLE OF CONTENTS

## TABLE OF CITED AUTHORITIES

**Cases** *Page*

*Cited Authorities*

*Cited Authorities*

*Cited Authorities*

*Page*

**Statutes**

*Cited Authorities*

*Page*

**Regulations**



**House of Representatives**

## TABLE OF APPENDICES

## OPINIONS BELOW

The Second Circuit's panel decision (HON. DENNIS JACOBS, HON. BARRINGTON D. PARKER, Circuit Judges. HON. JOHN GLEESON District Judge), which is unpublished at 04- 4044, is reproduced in the appendix hereto (App. A 1-4). The opinion of the United States District Court for the Northern District of New York, (Hurd, D.), is reproduced at (App. B 5-16). The opinion of the State Review Officer (Frank Munoz), is reproduced at (App. C 17-33). The opinion of the Impartial Hearing Officer (George Kandalakis), is reproduced at (App. D 34-53).

## STATEMENT OF JURISDICTION

The District Court has jurisdiction under 20 U.S.C. § 1415(i)(3)(A). The judgment of the Court of Appeals was entered on July 25, 2005. This Court has jurisdiction to issue the writ under 28 U.S.C. § 1254(1).

## STATUTORY PROVISIONS INVOLVED

This is a case, as was *Board of Education v. Rowley*, 458 U.S 176, 102 S. Ct. 3034 (1982), of statutory interpretation. The main issue is whether or not petitioners' rights as a parent and as a disabled child under the Individuals With Disabilities Education Act[1] (hereafter IDEA) were properly construed.

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1. Amended by Congress as the Individuals with Disabilities Education Improvement Act of 2004, same cite.

In particular, 20 U.S.C. § 1415(i)(2), reads as follows:

2) Right to bring civil action

(A) In general

Any party aggrieved by the findings and decision made under subsection (f) or (k) of this section who does not have the right to an appeal under subsection (g) of this section, and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy.

(B) Additional requirements

In any action brought under this paragraph, the court -

(i) shall receive the records of the administrative proceedings;

(ii) shall hear additional evidence at the request of a party; and

(iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.